MATTER OF X- CORP.

DATE: FEB. 22, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an eBusiness solutions provider, seeks to employ the Beneficiary permanently in the United States as a management analyst under the immigrant classification of advanced degree professional. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2).

The instant petition, Form I-140, was filed on June 12, 2015. As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed with the U.S. Department of Labor (DOL) on October 1, 2014, and certified by the DOL (labor certification) on May 27, 2015. To be eligible for the job offered and the requested visa classification, the Beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date.[1] *See Matter of Wing's Tea House*, 16 I&N 158, 160 (Act. Reg'l Comm'r 1977). The priority date of the instant petition is October 1, 2014.

On July 3, 2015, the Director, Nebraska Service, denied the petition on the ground that the evidence of record did not establish that the Beneficiary has a U.S. master's degree or a foreign equivalent degree, as required under the terms of the labor certification to be eligible for classification as an advanced degree professional and to qualify for the job offered. The Director also pointed out that the Beneficiary was not eligible for classification as an advanced degree professional based on a baccalaureate degree and five years of qualifying experience because the labor certification specifically requires a master's degree, and does not allow for a combination of education and experience to fulfill that degree requirement.

The matter is now before us on appeal. The Petitioner submits additional evidence and asserts that the Beneficiary's Master of Arts in the field of economics from an Indian university, which culminated five years of study at that institution, is equivalent to a U.S. master's degree in that field. Upon *de novo* review, we will dismiss the appeal.

The Petitioner has not established that the Beneficiary is eligible for classification as an advanced degree professional or qualified for the job offered under the terms of the labor certification because

[1] The priority date of an immigrant petition is the date the underlying labor certification application was accepted for processing by the DOL *See* 8 C.F.R. § 204.5(d).

he does not have a U.S. master's degree or a foreign equivalent degree. We also find that the evidence of record is insufficient to establish that the Beneficiary had the requisite experience specified on the labor certification to qualify for the job offered. Accordingly, the petition will remain denied.

I. LAW AND ANALYSIS

A. The Roles of the DOL and U.S. Citizenship and Immigration Services (USCIS) in the Immigrant Visa Process

At the outset, it is important to discuss the respective roles of the DOL and USCIS in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides as follows:

> Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
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> (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
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> (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the beneficiary are qualified for a specific immigrant classification. This fact has not gone unnoticed by federal circuit courts:

> There is no doubt that the authority to make preference classification decisions rests with INS.[2] The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).[3] Id. at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful

[2] The legacy INS (Immigration and Naturalization Service) was replaced in part by USCIS (originally the Bureau of Citizenship and Immigration Services) when the Homeland Security Act of 2002 entered into force on March 1, 2003.
[3] Based on revisions to the Act, the current citation is section 212(a)(5)(A).

> misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
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> . . .
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> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference [visa category] status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

> The labor certification made by the Secretary of Labor . . . pursuant to section 212(a)(14) of the [Act] is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

> [T]he Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b),

> 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).
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> The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine whether the offered position and the beneficiary are eligible for the requested employment-based immigrant visa classification, and whether the beneficiary qualifies for the offered position.

B. Eligibility for the Classification Sought

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

The terms "advanced degree" and "profession" are defined in 8 C.F.R. § 204.5(k)(2). The regulatory language reads as follows:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> *Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. [The occupations listed in section 101(a)(32) of the Act are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."]

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
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> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of

> letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

Therefore, a petition for an advanced degree professional must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Furthermore, an "advanced degree" is either (1) a U.S. academic or professional degree or a foreign equivalent degree above a baccalaureate, or (2) a U.S. baccalaureate or a foreign equivalent degree followed by at least five years of progressive experience in the specialty.

In this case, Part H of the labor certification sets forth the following minimum requirements for the proffered position of management analyst:

4.	Education: Minimum level required:	Master's degree
4-B.	Major Field of Study:	Economics
5.	Training:	None required
6.	Experience in the Job Offered:	24 months
7.	Alternate Field of Study:	Acceptable
7-A	What Field(s) of Study	Business Administration or related field
8.	Alternate Combination of Education and Experience:	Not acceptable
9.	Foreign Educational Equivalent	Acceptable
10.	Experience in an Alternate Occupation	Acceptable
10-A.	How many months?	24 months
10-B.	What job title(s)?	Business Development Manager or related occupation

Thus, the labor certification requires a master's degree, or a foreign equivalent degree, in economics, business administration, or a related field, and 24 months of experience as a management analyst, business development manager, or in a related occupation.

As evidence of the Beneficiary's educational credentials and experience the Petitioner submitted the following documentation with the Form I-140 and in response to the Director's request for evidence:

- Copies of a diploma and transcripts from the University of India, showing that the Beneficiary was awarded a Bachelor of Arts in the field of economics on February 9, 2011, after completing a three-year degree program;
- Copies of a diploma and transcripts from the University of India, indicating that the Beneficiary received a Master of Arts in the field of economics on October 10, 2013, after completing a four-semester degree program;
- A certificate, transcript, and other documentation from the India, showing that the Beneficiary was awarded a "Post Graduate Diploma in Customer Relationship Management PGDCRM" on July 19, 2013, after completing a one-year academic program in March 2013;
- A letter from the "Manager – Human Resource" of India, dated March 13, 2013, stating that the Beneficiary was employed as "Assistant Program Manager" and describing his duties generally from May 9, 2008 to December 2, 2008;
- A letter from the proprietor of India, undated, stating that the Beneficiary was employed as a full-time market research analyst and describing his duties from December 8, 2008 to July 31, 2009;
- A letter from the "Authorized Signatory" of India, dated March 12, 2013, stating that the Beneficiary was "associated" with the company as "Business Development Manager" and describing his duties generally from August 4, 2009 to March 9, 2012;
- A letter from the "Assistant Manager – HR" of India, dated October 18, 2013, stating that the Beneficiary was employed as "Engagement Manager" from March 12, 2012 to October 18, 2013;
- An evaluation of the Beneficiary's education and experience by dated May 12, 2014, which concluded that the Beneficiary's three-year Bachelor of Arts in economics from the University of and his one-year PGD from the in combination with his work experience was equivalent to a Bachelor of Arts in Business Economics from an accredited college or university in the United States, and that the Beneficiary's two-year Master of Arts in economics from the University of was equivalent to a Master of Arts in economics from an accredited university in the United States;
- An evaluation of the Beneficiary's education alone by dated June 23, 2015, which concluded that the Beneficiary's Master of Arts in economics from the University of culminating five years of university study in that field, was equivalent to a Master of Arts in Economics from an accredited university in the United States.

In denying the petition the Director found that the Beneficiary's Bachelor of Arts degree in India was equivalent to three years of study at a U.S. university, and that the Beneficiary's Master of Arts

degree in India was equivalent to a U.S. bachelor's degree. The Director cited credential descriptions and advice found in the American Association of Collegiate Registrars and Admissions Officers (AACRAO)'s Educational Database for Global Education (EDGE). The Director also found that the Beneficiary's PGD from the did not augment the U.S. equivalency of his Indian education because it was earned concurrently with his Master of Arts degree. In reviewing the credentials evaluations submitted by the Petitioner, the Director noted that did not regard the Beneficiary's educational credentials in India, standing alone, as equivalent to a U.S. master's degree, but only in combination with the Beneficiary's work experience in India. Thus, did not conclude that the Beneficiary has an equivalent foreign degree to a U.S. master's degree. As for the evaluation, the Director was not persuaded that the Beneficiary's Master of Arts degree, culminating five years of university study in India, should be considered equivalent to a U.S. master's degree simply because a master's degree may be awarded in the United States, or awarded by other countries and recognized as such in the United States, based on various combinations of post-secondary and graduate degree programs totaling five years of study.

On appeal the Petitioner asserts that the Beneficiary's two-year Master of Arts in economics from the University of following his three-year Bachelor of Arts in economics from the same institution, is substantively equivalent to the one-year Master of Arts in economics offered at many U.S. universities following a four-year bachelor's degree. The Petitioner points out that the EDGE database considers one-year master's degrees that cap five-year post-secondary and graduate tracks in the United Kingdom and other Commonwealth countries, as well as two-year master's degrees that cap five-year post-secondary and graduate tracks in the -system countries of Europe, as equivalent to U.S. master's degrees. In view of these EDGE equivalencies, the Petitioner contends that the Beneficiary's two-year Master of Arts from India, because it caps a five-year university track, should likewise be considered as equivalent to a U.S. master's degree.

In support of its appeal the Petitioner re-submits the evaluation of the Beneficiary's educational credentials, supplemented by an addendum addressing issues raised in the Director's denial decision. states that its general rule, when establishing master's degree equivalencies, is that if a foreign academic program comprises five years or more and the capstone degree is a second degree, it will be accepted as equivalent to a master's degree in the United States. Thus, disagrees with EDGE insofar as the latter does not accord a two-year master's degree culminating five years of university study in India the same U.S. equivalency as it does with respect to master's degrees from -system countries, the United Kingdom, and other Commonwealth countries. According to the equation of an Indian master's degree to a U.S. bachelor's degree by EDGE appears to be based on outdated information from an educational publication in 1986. No evidence is provided in support of this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Nonetheless, asserts that its evaluation of the Beneficiary's Master of Arts from the University of as equivalent to a U.S. master's degree is justified because the structure and rigor of the Indian program is comparable to the structure and rigor of a U.S. master's degree program and a U.S. master's

degree in economics commonly requires only one year of graduate-level coursework. Finally, states that the EDGE database should not be regarded as a single-source determinant of foreign academic equivalencies.

While we agree with general statement that the EDGE database should not be utilized by USCIS as an exclusive source for determining foreign academic equivalencies, we consider EDGE to be a reliable, peer-reviewed source of information about foreign degree equivalencies.[4] As previously indicated, EDGE was created by AACRAO, which is described on its website as "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries." http://www.aacrao.org/About-AACRAO.aspx. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." http://edge.aacrao.org/info.php. Authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.[5] If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.*

EDGE indicates that a Bachelor of Arts degree in India is awarded upon completion of two to three years of tertiary study beyond the Higher Secondary Certificate (comparable to a U.S. high school diploma), with the great majority being awarded after three years of tertiary study. The Indian degree is comparable to study at a U.S. college or university for the same number of years. According to EDGE, therefore, the beneficiary's three-year bachelor's degree from the University of Pune is comparable to three years of study at a U.S. college or university. EDGE also indicates that a Master of Arts degree in India is awarded upon completion of two years of study beyond the three-year bachelor's degree, and is comparable to a bachelor's degree in the United States. According to EDGE, therefore, the beneficiary's two-year Master of Arts degree from the University of is comparable to a bachelor's degree from a U.S. college or university.

We do not utilize AACRAO's EDGE as a single source for evaluating U.S. degree equivalencies of foreign credentials. Nor do we regard it as so authoritative as to exclude the consideration of credentials evaluations from other sources. We note, however, that the information in AACRAO's

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[4] In *Confluence Intern., Inc. v. Holder,* 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that we provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the beneficiary's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the beneficiary's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

[5] *See An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/publications/guide_to_creating_international_publications.pdf.

database – EDGE – has been vetted by a panel of experts, reflects the panel's assessment of the quality of the educational institutions and programs reviewed, and has general applicability for each of the foreign credentials appearing in the database, including the Bachelor of Arts and Master of Arts degrees in India. The evaluations submitted by the petitioner, on the other hand, were prepared solely for advocacy purposes in this proceeding. We consider EDGE to be a more reliable resource than and in this instance.

In further support of its claim that the Beneficiary's Master of Arts from the University of is equivalent to a U.S. master's degree, the petitioner cites an unpublished decision issued by our office in another immigrant petition. The appeal involved a three-year bachelor's degree and a two-year master of science in physics from University in India, in which we found the Master of Science to be equivalent to a U.S. master's degree in physics. (Receipt Number AAO decision 2007.) We are not bound in the instant proceeding by our decision on another Indian degree case from 2007. While the regulation at 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions (like the one discussed above) are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. *See* 8 C.F.R. § 103.9(a). Thus, our decision from 2007, is not a precedent, is not binding on our office, and is not persuasive evidence that the beneficiary's Master of Arts degree from the University of is equivalent to a U.S. master's degree.

For all of the reasons discussed above, we conclude that the Beneficiary's Master of Arts in economics from the University of is not equivalent to a master's degree in economics from an accredited university in the United States. Therefore, the Petitioner has not established the Beneficiary's eligibility for classification as an advanced degree professional, under section 203(b)(2) of the Act, based on a foreign equivalent degree to a U.S. master's degree. Accordingly, the petition cannot be approved.

C. Qualifications for the Job Offered

As previously stated, to be eligible for approval under the immigrant visa petition, the Beneficiary must have all the education, training, and experience specified on the underlying labor certification as of the petition's priority date, which is the date the labor certification application was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg'l Comm'r 1977).

In this case, the priority date is October 1, 2014. The key to determining the job qualifications is found in Part H of the ETA Form 9089, which describes the terms and conditions of the job offered. It is important that the labor certification be read as a whole. In this case, the minimum level of education, training, and experience required for the proffered position of management analyst is stated on the ETA Form 9089 as follows:

- The minimum educational requirement is a master's degree in economics, business administration, or a related field, or a foreign educational equivalent (Part H.4, H.4-B, H.7, H.7-A, and H.9).
- There is no minimum training requirement (Part H.5).
- The minimum experience requirement is 24 months as a management analyst, business development manager, or in a related occupation (Part H.6, H.10, H.10-A, and H.10-B).

The Beneficiary does not meet the minimum educational requirement of the labor certification. As previously discussed, the Beneficiary's Master of Arts in economics from the University of is not a foreign educational equivalent to a U.S. master's degree. It does not meet the definition of an "advanced degree" in 8 C.F.R. § 204.5(k)(2) because it is not a foreign equivalent degree to a U.S. master's degree. Since he does not fulfill the educational requirement in Part H of the ETA Form 9089, the Beneficiary does not qualify for the job offered. For this reason as well, the petition cannot be approved.

Beyond the decision of the Director, the Beneficiary does not meet the minimum experience requirement of the labor certification because three of the four letters from former employers do not satisfy the substantive requirements of 8 C.F.R. § 204.5(g)(1), which provides as follows:

> Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received.

Of the four letters from former employers submitted in this proceeding, only the letter from the proprietor of attesting to the Beneficiary's full-time employment as a research analyst from December 8, 2008 to July 31, 2009, contains the specific description of the duties performed, as required in the regulation. The Beneficiary's employment at lasted less than eight months, which was not enough time to fulfill the 24-month minimum specified in the labor certification.

With regard to the substantive shortcomings of the other three letters:

- The letter from does not provide a specific description of the duties performed by the Beneficiary as "Assistant Program Manager" from May 9, 2008 to December 2, 2008.
- The letter from does not provide the name, address, and title of the writer, or a specific description of the duties performed by the Beneficiary as "Business Development Manager," and is vague about whether the Beneficiary's "association" with the company constituted full-time employment from August 4, 2009 to March 9, 2012.
- The letter from does not provide a specific description of the duties performed by the Beneficiary as "Engagement Manager" from March 12, 2012 to October 18, 2013.

Thus, the Petitioner has not established that the Beneficiary has the requisite 24 months of qualifying experience, as specified in Part H of the ETA Form 9089. For this additional reason the petition cannot be approved.

II. CONCLUSION

Based on the foregoing analysis, we find that the petition must be denied on the following grounds:

- The Beneficiary is not eligible for classification as an advanced degree professional under section 203(b)(2) of the Act because he does not have a U.S. master's degree in economics, business administration, or a related field, or a foreign equivalent degree.
- The Beneficiary does does not qualify for the proffered position under the terms of the labor certification, because he does not have a U.S. master's degree in economics, business administration, or a related field, or a foreign educational equivalent, and the record does not establish that he has 24 months of qualifying experience as a management analyst, or a business manager, or in a related occupation.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. Therefore, the appeal will be dismissed and the petition remains denied.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of X- Corp.*, ID# 15679 (AAO Feb. 22, 2016)